

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORE OPTICAL TECHNOLOGIES, LLC,
Plaintiff,
v.
JUNIPER NETWORKS INC,
Defendant.

Case No. [21-cv-02428-VC](#)

**GRANTING MOTION FOR
INTERLOCUTORY APPEAL AND A
STAY**

Re: Dkt. No. 119

Juniper’s motion for an interlocutory appeal and to stay proceedings is granted. District courts may certify orders “not otherwise appealable” if: (1) the order “involves a controlling question of law,” (2) there exists “substantial ground for difference of opinion,” and (3) granting an immediate appeal “may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b). The order denying Juniper’s motion to dismiss meets all three requirements. It resolved a legal question—whether Core Optical’s failure to mark now bars its recovery of damages, even though it asserts only method claims in this case. There exists substantial ground for disagreement given confusion in Federal Circuit precedent on the issue. And granting an immediate appeal would materially advance the litigation: were the Federal Circuit to reverse the order denying Juniper’s motion to dismiss, it seems likely (if not certain) that would terminate this litigation.

The case is stayed pending a decision by the Federal Circuit on whether to take the appeal. The parties should file a joint status report within 14 days of the Federal Circuit’s decision. If the Federal Circuit declines to take the appeal, the parties should include a proposed litigation schedule in their status report. They may also request a case management conference if

they believe one is necessary. The case management conference currently scheduled for January 16, 2022 is vacated.

IT IS SO ORDERED.

Dated: December 17, 2021

A handwritten signature in black ink, appearing to read 'V. Chhabria', is written over a horizontal line.

VINCE CHHABRIA
United States District Judge